

STATE OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF NEW BERLIN

Case XIII  
No. 17000  
MIA-52  
Decision No. 12330-A

and

NEW BERLIN PROFESSIONAL POLICEMEN'S  
ASSOCIATION

DISCUSSION & AWARD

On December 11, 1973 the Wisconsin Employment Relations Commission issued a "Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration." This document found that there was ". . . an impasse existing between the parties with respect to wages, hours and working conditions of law personnel in the employ of the Municipal Employer for the years 1973 and 1974." And, ". . . that on November 28, 1973, the parties filed a stipulation with the Commission, wherein they agreed to proceed to last and final offer arbitration, pursuant to Section 111.77(4)(b) of MERA, and wherein they set forth that they had reached an impasse in negotiations on the following issues: (a) The salary range for the newly created position of Corporal; (b) If the agreement is for a term extending beyond December 31, 1973, the amount of the general increase, effective on and after January 1, 1974; (c) The monthly allowance for each credit of approved educational courses, the yearly maximum thereof and the allowance for police officers who have obtained a Bachelor's degree in Law, Social Science, Psychology or Political Science; (d) The required place of residence of Police Officers; (3) The effective date of the general increase applicable for the year 1973; and (f) The expiration date for a current agreement."

The decision of the Wisconsin Employment Relations Commission also provided for the submission of a panel of arbitrators to the parties from whom an arbitrator was to be selected. Pursuant to this agreement, the parties selected the undersigned who was duly appointed as arbitrator in the matter by the Wisconsin Employment Relations Commission on January 8, 1974 (Decision number 12330-A).

Section 111.77(4) under which these proceedings were initiated provides in material part as follows:

"(4) There shall be 2 alternative forms of arbitration:

"a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

"(b) Form 2. Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

By stipulation of the parties and in conformance with the decision of the Wisconsin Employment Relations Commission, Form 2 was selected. The arbitrator's power is therefore limited to a selection of the final offer of one of the parties with respect to all of the issues involved.

An analysis of the six issues set forth in the stipulation of the parties above quoted reveals that there are really only three issues in which the final offer of the parties has any great variance. Those issues are: (1) the question of retroactivity, i.e., whether the agreed upon salary increases for 1973 shall take effect on January 1, 1973, as proposed by the Association, or June 1, 1973, as proposed by the City of New Berlin; (2) the term of the contract (whether for one or two years); and (3) additional salary allowances for educational attainments.

The final offer of the Association is as follows:

"(A) The salary range for the newly created position of Corporal.

"It is the last and final offer of the Petitioner that the salary range for the position of Corporal be as follows: (It is the understanding of Petitioner that the annual compensation rate for patrolman, sergeants and detectives as enumerated below has already been agreed to. The below listings of compensation have been provided to both enumerate the salary range for corporal and the relationship of that salary to patrolmen, sergeants and detectives.)

<u>Patrolman</u>	<u>Monthly</u>	<u>Annually</u>
0-6 mo.	\$776.00	\$ 9,312.00
6-12 mo.	826.00	9,912.00
12-24 mo.	869.00	10,428.00
24-36 mo.	912.00	10,944.00
36 mo. plus	954.00	11,448.00
<u>Corporal</u>	<u>Monthly</u>	<u>Annually</u>
0-18 mo.	\$962.00	\$11,554.00
18-36 mo.	970.00	11,640.00
36 mo. plus	978.00	11,763.00
<u>Sergeants and Detectives</u>	<u>Monthly</u>	<u>Annually</u>
0-18 mo.	\$ 987.00	\$11,844.00
18-36 mo.	1,014.00	12,168.00
36 mo. plus	1,040.00	12,480.00

"(B) If the agreement is for a term extending beyond December 31, 1973, the amount of the general increase, effective on and after January 1, 1974.

"In response to this issue, Petitioner respectfully maintains that it has not negotiated any issues in regard to a contract in excess of one year's duration. At this time, therefore, and in light of Petitioner's position that the current matter pending before arbitration shall be for a one year contract it would be inconsistent with Petitioner's other last and final offers to make a last and final offer on this issue.

"(C) The monthly allowance for each credit of approved educational courses, the yearly maximum thereof and the allowance for police officers who have obtained a Bachelor's degree in Law, Social Science, Psychology or Political Science.

"It is the position of Petitioner that its last and final offer on this issue that the educational incentive be changed to \$1.00 each month for each credit in approved courses with maximum incentive increased from \$600.00 per year to \$720.00 per year. The maximum educational incentive is to be given to officers who have obtained a four year degree in fields of Law, Social Science, Psychology or Political Science.

"(D) The required place of residence of police officers.

"It is the last and final offer of the Petitioner that police officers be allowed to reside in places other than the City of New Berlin, provided that the residence be limited to a distance not to exceed ten miles from the city limit, except that a further distance may be allowed with approval of the Chief of Police.

"(E) The effective date of the general increase applicable for the year 1973.

"It is the position of Petitioner that the effective date of the general increase for the year 1973 be the expiration date of the previous contract between Petitioner and the City of New Berlin, to wit, January 1, 1973, and that all parts of the contract resulting from this arbitration be fully retroactive to that date.

"(F) The expiration date for a current agreement.

"It is the position of Petitioner that this matter pending before the Wisconsin Employment Relations Commission resulting in a contract having the duration of one year therefore expires on December 31, 1973."

The final offer of the City of New Berlin, together with an amendment which was filed in timely fashion, and as so amended, reads as follows:

"(a) As to the salary range for the newly created position of Corporal:

Beginning	\$960.00 a month
After 18 months	\$970.00

"(b) As to the amount of the general salary increase for the calendar year, 1974:

\$45.00 a month

"(c) As to monetary payment for education:

Monthly allowance a credit	No change.
Maximum annual allowance	Increase from \$600 to \$660 a year effective on and after January 1, 1974.

Allowance for Graduates in:

Law	
Social Science	
Psychology	
Political Science	No change.

"(d) As to required residence:

"All employees shall be required to reside within a radius of ten (10) miles from police headquarters. Present employees not residing within such circumference may apply to the Fire and Police Commission for extension of time to change residence and the Commission shall be empowered, upon a showing of undue hardship if such residency requirement is strictly enforced, to grant an extension of not more than one (1) year providing, however, that the Fire and Police Commission may, upon appropriate showing, grant additional extensions and providing further that no employee shall be promoted during any period such employee does not reside within such circumference.

"(e) As to the effective date of the general increase for 1973:

June 1, 1973

"(f) As to the expiration date for the Agreement:

December 31, 1974."

The final offer of both parties with respect to the salary range for the newly created position of Corporal, as well as the residency requirement for police officers are so close together that it would really make little difference which of the final offers was adopted. Therefore, in the final selection of which of the two offers shall be incorporated in the award, the difference in the two proposals with respect to these two issues has played no real part in the decisional process.

On the issue of retroactivity standing alone, it is the opinion of the arbitrator that the position of the Association has more to commend it than that of the City. While it is true that for the preceding contract year full retroactivity to January 1 was not incorporated in the agreement and the date of execution of the agreement, March 14, 1972, was used in its stead, the record of these proceedings is barren as to what bargaining considerations might have entered into the selection of that date. It is difficult to determine why the date of June 1, 1973 as proposed by the City is a more equitable arrangement than the January 1, 1973 date proposed by the Association. Standing on its own merits, the proposal of the Association on this issue appears to be not only more equitable but more in conformance with traditional industrial relations practices in both the public and private sectors within the general labor market area.

On the subject of education allowances, the City of New Berlin appears to have been a leader in providing for such allowances to its police officers. No strong case was made for the last proposal of the Association and certain aspects of it might well prove difficult to administer. The last proposal of the City appears to be fair and equitable, and again, standing alone, would seem to dictate the selection of the City's proposal rather than that of the Association.

The term of the agreement as well as the salary increase for 1974 are of course inextricably interwoven together. The Association has made no proposal for a salary increase for the year 1974 because it views any proposed increase for 1974 as being inconsistent with its last and final offer on the other issues involved and more particularly the issue involving the term of the agreement. The City's salary offer for the year 1974 of \$45.00 per month, while it cannot be judged in the same framework that would have been possible had there been free and

open bargaining on this issue, appears nonetheless to be somewhere close to the mark of the extent of an increase which might very well have evolved through the bargaining process. The figure of \$45.00 per month is certainly within the realm of reasonable expectation if the issue had been fully bargained between the parties. This brings us down to the question of what appears to be an important, if not the overriding issue in this case, i.e., the term of the agreement. On this issue the sum of the Association's position as set forth by counsel in his post-hearing brief is as follows:

"The bargaining between the parties encompassed the question of the length of the agreement. Past practices in New Berlin clearly demonstrate one year contracts. Even if the Association were to have changed its position and therefore submitted to negotiations on a two year contract, without full retroactivity for 1973 it would have been impossible to have arrived at a two year contract because of the City's position, the issue then in the last and final offer had to remain an issue of a one year contract. No one is prejudiced by the granting of a one years contract. The Association will be gravely affected by the granting of a two year contract for which there have been no real good faith negotiations between the parties. To emphasize it again we submit that because of the retroactivity for the 1973 question it would have been incongruous for the Association to agree to any wage increase for 1974. The granting of a one year contract will merely mean that a base will be set upon which a 1974 wage increase can be granted. We submit that without full retroactivity for 1973, any agreement as to a wage increase for 1974 would have been extremely detrimental to the membership of the Association, and have put them into the untenable position of agreeing to a future wage increase without a full year's increase upon which to base future wages. In our opinion the City cannot show such undue prejudice from the City's point of view."

Counsel for the City in his post-hearing brief argues in material part as follows:

"It is commonly recognized, in both the private and public sector, that it is desirable from the viewpoint of both parties and the public that collective bargaining agreements should exceed one year in length. In the private sector, multi-year agreements are more the rule than the exception. Collective bargaining is newer in the public sector and some lag is to be expected, but the trend is to longer terms. The recent amendment of the Wisconsin statutes on public collective bargaining reflects this general view in that Section 111.70, Wisconsin Statutes, has been amended to enable three year agreements instead of one. The prior limit of one year was so impractical that the parties to collective bargaining agreements in the municipal area very quickly adopted devices to circumvent this limitation and shortly before its extension, the statutory limitation was frequently ignored.

"The reasons for a term exceeding one year are obvious. Negotiations almost invariably produce some intensity of feeling and a period of relative calm is desirable before negotiations are resumed. New provisions deserve a tryout period for experience and detached contemplation is likely to provide the perspective to reduce irritations and complaints to their proper proportions.

"The very real problem in this one is that the Association's proposal really provides no contract time whatsoever for the end of the term they propose is already more than two months past and it is already more than two months into the term of any new agreement which would succeed the old under the Association's proposal.

"The expiration provided in the City's proposal just barely allows some experience with the numerous changes that the parties have already agreed to before it will be necessary, even under the City's proposal, to resume collective bargaining with the hope of negotiating a new agreement before the coming expiration date, December 31, 1974.

\* \* \*

"The record in this case reveals that there really has not been collective bargaining between the City and the Association for over a year. The Association delivered its written proposals in December of 1972. The parties convened in December of 1972 and January of 1973 and by the end of January the City had made and modified proposals to reach a form substantially equivalent to the final offer now before the Arbitrator.

"The Association has been represented in bargaining by three different chairmen. The first of these, Sgt. Wozniarski, acted for the first meeting or two and then withdrew. Later, Officer Konkol acted as chairman for a period, but then dropped out, apparently to change to employment with the F.B.I. Lastly, Officer Wiedmeyer has acted as chairman. Attorney Boyle should probably be added to this list, for he, also, on at least one occasion, acted as the representative in bargaining for the Association. The Association may have good reason for these changes, but the City should not be penalized because they have occurred.

"The City has not been charged with being unable or unwilling to meet and negotiate with the Association. It simply hasn't been asked to meet.

"Collective bargaining will only be successful if both parties promptly, diligently and effectively, pursue their objectives. The best interest of collective bargaining as a means for eliminating or minimizing disputes will not be served if either party is permitted to dally, to frequently change leadership and generally to wander ineffectively.

"On this record, the Association has not acted diligently in its own interest. To ignore this deficiency is to award indifference and to hamper future bargaining."

In view of the length of the current collective bargaining proceedings, it would seem highly desirable to have a contract term which would include not only 1973 but the current calendar year as well. The submission of final offers in the 1973 collective bargaining year were not perfected until December 28, 1973. The arbitration hearing in these proceedings was not held until Thursday, February 28, 1974 and final briefs were not exchanged until several weeks later. If the position of the Association was to be adopted, the parties would find themselves in the position where bargaining for the 1974 contract year could realistically not be expected to begin until sometime in April of 1974.

In the light of this immediate past history and the resultant long drawn out and agonizing period of gestation which seems to have been necessary in giving birth to a one year contract, a multiple birth would seem to be more in order.

On the basis of the whole of these proceedings and in balance collective bargaining realities would seem to dictate the adoption of the final offer of the City of New Berlin rather than that of the Association. Consequently, the award shall so provide.

A W A R D

The final offer of the City of New Berlin is adopted:

- (a) As to the salary range for the newly created position of Corporal:

Beginning	\$960.00 a month
After 18 months	\$970.00

- (b) As to the amount of the general salary increase for the calendar year, 1974:

\$45.00 a month

- (c) As to monetary payment for education:

Monthly allowance a credit	No change
Maximum annual allowance	Increase from \$600 to \$660 a year effective on and after January 1, 1974.

- (d) Allowance for Graduates in:

Law	
Social Science	
Psychology	
Political Science	No change.

- (d) As to required residence:

All employees shall be required to reside within a radius of ten (10) miles from police headquarters. Present employees not residing within such circumference may apply to the Fire and Police Commission for extension of time to change residence and the Commission shall be empowered, upon a showing of undue hardship if such residency requirement is strictly enforced, to grant an extension of not more than one (1) year providing, however, that the Fire and Police Commission may, upon appropriate showing, grant additional extensions and providing further that no employee shall be promoted during any period such employee does not reside within such circumference.

- (e) As to the effective date of the general increase for 1973:  
June 1, 1973.

- (f) As to the expiration date for the Agreement:  
December 31, 1974.

Respectfully submitted,

Philip G. Marshall /s/  
Philip G. Marshall

March 28, 1974

